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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,086	03/26/2001	Jean-Michel Simon	FR 000029	9827

24737 7590 07/02/2004

PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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BRIARCLIFF MANOR, NY 10510

EXAMINER

PHU, SANH D

ART UNIT	PAPER NUMBER
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2682

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DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/817,086

Applicant(s)

SIMON, JEAN-MICHEL

Examiner

Sanh Phu

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-7.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Response to Arguments

1. Applicant's arguments filed 06/08/2004 have been fully considered but they are not persuasive.

Objection to the specification under 35 USC 132:

Applicant, in his response, argues that the original specification and abstract do support the added limitation "operation software", because the original specification discloses on page 1 lines 1-22 that the document PCT WO 97/35453 updates or modifies the operation software. The examiner, however, disagrees. Since the original specification **does not incorporate the above document PCT WO 97/35453 by reference**, the above document is not a part of the original specification. See MPEP 2163.07(b).

Rejection to claims 1-7 under 35 USC 112, first paragraph:

As set forth above, since the original specification **does not incorporate the above document PCT WO 97/35453 by reference**, the above document is not a part of the original specification and cannot be relied on to support the new added limitation "operating software" as recited in claims. See MPEP 2163.07(b).

Rejection to claims 1-2, and 5-7 under 35 USC 102(e):

Applicant argues that Turner discloses "an updating of configuration information (i.e., non-performance data)", while the claims require updating operation software (performance data). The examiner, however, disagrees. First, it is noted that the features upon which applicant relies (i.e., **performance data**) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification,

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limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Second, the operating software is defined by Newton's Telecom Dictionary as "the detailed instruction to operate a computer". In this case, the user's preferred settings of the telephone's features at column 1 lines 13-16 reads on "operating software" as claimed because the computers 22, 23 of the telephones 2 and 3 are instructed by the user's preferred settings. Therefore, the user's preferred settings of the telephone's features at column 1 lines 13-16 reads on "operating software" as claimed with the broadest reasonable interpretations.

Rejection to claims 3-4 under 35 USC 103(a):

Please see the examiner's comments as set forth above for the reasons as to why claims 3-4 are not patentable.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sanh Phu whose telephone number is (703) 305-8635. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on (703)301-6739. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nguyen Vo
7-1-07

NGUYENT.VO
PRIMARY EXAMINER